

**The House Committee on the Judiciary  
Congressional Briefing on the Scope of the Executive Power Since 9/11:  
Presidential Authority to Conduct Warrantless Electronic Surveillance**

**Statement by Representative Maxine Waters (CA-35)**

I would like to commend the Ranking Member of the Judiciary Committee, Congressman Conyers, for gathering us here today to discuss this very important issue. It was with great concern that I learned that President Bush signed a secret order in 2002 authorizing the National Security Agency (NSA) to eavesdrop on U.S. citizens in the United States. The NSA has monitored e-mails, telephone calls and other communications of hundreds maybe thousands of American citizens. By the President's own admission, this was a highly classified program and its existence was known only to very select high ranking government officials. I am pleased that Members from both sides of the aisle have joined together by expressing shock and outrage over the President's actions. I sincerely hope that this briefing will be the first of many to come as we investigate the criminal and constitutional issues raised by the warrantless wiretapping of Americans by the President.

September 11, 2001 was the most tragic and horrific event to take place in modern American history. However, it should not serve as the Administration's free pass to trample upon the rights and liberties of American citizens. Although there is a very precarious balance between preserving national security and upholding our American constitutional values set forth in the Bill of Rights, we must always err on the side of ensuring that we do not become a police state. In America, we are bound by the rule of law, but this premise has been diminished under the current Administration that has time and time again supported legislation and instituted policies that negatively impact individual liberties and give authorities unprecedented power over the general public. All of these actions have been in the name of "preventing terrorist activity" and "protecting national security" but many of the broader powers granted to government officials seem unrelated to terrorism and a means by which the government can gain information about regular American citizens; and even if they are related to legitimate national security concerns, they must fall within the confines of established law. If the purpose of the President's actions was to gather surveillance that could be used to prevent a terrorist attack, there were other lawful ways to achieve this goal.

The President could have effectively monitored questionable individuals by following the procedures set forth in the Foreign Intelligence Surveillance Act, better known as FISA. The heart of FISA is its provisions dealing with wiretapping. Its very essence rests in its requirement that requests for intelligence surveillance are presented to an impartial judge who determines whether there is sufficient cause to grant the surveillance request. The President claims that the emergency nature of these requests made it necessary for him to grant these secret authorizations. However, that argument carries no weight. It is well-established that it is extremely rare for FISA to deny a request for a warrant and that almost all of the cases brought before the FISA court are sensitive in nature and need emergency attention. In fact, the FISA court has approved at least 18,740 applications for electronic surveillance or physical searches from five presidential administrations since 1979. The bottom line is that the FISA court began to question the current Administration's applications and for the first time, since its inception in 1978, made its first outright denial of an application in its history under this Administration. The Administration's remedy was to simply bypass the FISA Court and the very careful safeguards that were incorporated into FISA and conduct secret warrantless searches. The President has authorized this despite the fact that FISA

very clearly makes it a crime to conduct electronic surveillance without a warrant, unless it is the first fifteen days of war.

The President's Press Secretary, Scott McClellan stated that they have "stayed in contact" with "the appropriate Members of Congress who are responsible for these matters on intelligence activities." The last time I checked my Constitution it stated that the entire Congress has oversight over matters conducted by the Executive Branch; not those that are hand selected by the President. Any statement made by the President indicating that Congress was aware of this program is misleading. Telling the House and Senate Party Leaders and the Chair and Ranking Members of the two Intelligence Committees about the program is not Congressional oversight or approval as the Administration implies. Moreover, it is a far cry from the system of checks and balances put into place by the Framers of the Constitution and the democratic ideals that are the backbone of our society. The President has also indicated that no Members of Congress expressed concern about the program. This too is false. In 2003, Senator John Rockefeller wrote Vice-President Cheney expressing concern about the program and House Democratic Leader Nancy Pelosi has also said that she expressed her concerns about the program to the Administration. The President knows full well that this program was classified and these Members of Congress would have violated the law if they went public with their concerns about the NSA program. These attacks are yet another attempt by the President, the Vice-President and other Administration officials to smear its critics and mislead the American people about the justifications for their actions.

The President very clearly stated that he has "reauthorized this program more than thirty times since the September 11<sup>th</sup> attacks, and I intend to do so for as long as our nation faces a continuing threat for al Qaeda and related groups." In making this statement, the President makes it clear that he will continue to ignore the laws that we have carefully crafted. He is also making it clear that the rule of law, which requires the check of the Judicial branch, does not apply to him. In other words, he will continue to do what he wants to do, even if it breaks the law and is without judicial consent. I fear that if the type of sentiment he expresses goes unchecked, we will find ourselves on a slippery slope that will take us on a downward spiral away from the very essence of what makes our country great. He speaks of the theory of the unitary executive and has very craftily attempted to nominate judicial appointees and top officials that believe in this theory. Yet, that is not the theory this country was founded upon. There are three branches of government that operate co-equally within a system of checks and balances. If we fail to do our part as the legislative branch to make it clear that the President was not justified in ordering this secret surveillance we will never be free from this type of unlawful government intrusion.

The President's actions are eerily similar to the FBI's COINTELPRO operations that were in place from 1957 to 1971. Under this program, the FBI engaged in illegal surveillance and infiltration to disrupt and destroy individuals and organizations that did not fit the political mold of the time. Those that were spied on included members of the Black Panther Party and civil rights leaders like Martin Luther King, Jr. and Medger Evers. These actions were inexcusable in the sixties and have no place whatsoever in the new millennium. Citizens of the United States have rights. We realize that there are very real terrorist threats that exist. However, winning the war on terror should not be at the expense of losing the war on protecting our civil liberties and constitutional rights.

I look forward to hearing the testimony of the witnesses and I am committed to ensuring that the actions of this Administration are properly investigated.